

## Surface Mining Reclamation and Enforcement, Interior

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where leaching of soluble or suspended particles is the greatest.

(b) *B horizon*. The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) *C horizon*. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

*Spoil* means overburden that has been removed during surface mining.

*Stabilize* means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

*Subirrigation* means irrigation of plants with water delivered to the roots from underneath.

*Surface water* means water, either flowing or standing, on the surface of the earth.

*Suspended solids* means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

*Toxic-forming materials* means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

*Toxic-mine drainage* means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

*Valley fill* means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the fill measured at the steepest point are greater than 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°.

*Waste* means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facili-

ties or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

*Water table* means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

[42 FR 62677, Dec. 13, 1977, as amended at 44 FR 30628, May 25, 1979]

### § 710.10 Information collection.

The collections of information contained in §§ 710.4, 710.11, and 710.12 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1029-0095. The information will be used in administering the Initial Regulatory Program. Response is required to obtain a benefit in accordance with 30 U.S.C. 1201 *et seq.* Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Information Collection Clearance Officer, OSM, Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029-0095), OMB, Washington, DC 20503.

[56 FR 6227, Feb. 14, 1991]

### § 710.11 Applicability.

(a) *Operations on lands on which such operations are regulated by a State.* (1) The requirements of the initial regulatory program do not apply to surface mining and reclamation operations which occur on lands within a State which does not regulate any part of such operations.

(2) *General obligations.* (i) A person conducting coal mining operations shall have a permit if required by the State in which he is mining and shall comply with State laws and regulations that are not inconsistent with the Act and this chapter.

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(ii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(iii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(3) *Performance standards obligations.*

(i) A person who conducts any coal mining operations under an initial permit issued by a State on or after February 3, 1978, shall comply with the requirements of the initial regulatory program. Such permits shall contain terms that comply with the relevant performance standards of the initial regulatory program.

(ii) On and after May 3, 1978, any person conducting coal mining operations shall comply with the initial regulatory program, except as provided in §710.12 of this part.

(iii) A person shall comply with the obligations of this section until he has received a permit to operate under a permanent State or Federal regulatory program.

(b) *Operations on Indian lands.* Any person who conducts surface coal mining and reclamation operations on Indian lands on or after December 16, 1977, in accordance with section 750.11(c) of this chapter, or who was otherwise subject to 25 CFR Part 216, Subpart B prior to September 22, 1994; shall comply with the performance standards of this subchapter.

(c) *Operations on Federal lands.* (1) A person conducting coal mining operations on Federal lands under a permit approved on or after February 3, 1978, shall comply with the performance standards of this chapter.

(2) Any person conducting coal mining operations on Federal lands on and after May 3, 1978, shall comply with the performance standards of this chapter.

(d) *Operations on all lands.* (1) The requirements of this chapter apply to operations conducted after the effective date of these regulations on lands from which the coal has not yet been removed and to any other lands used, dis-

turbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or these regulations.

(2) Any pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations, unless—

(i) The permittee submits to the regulatory authority by March 1, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 4, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 4, 1978;

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer; and

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than May 4, 1978 and completed later than November 4, 1978.

(3) Notwithstanding paragraph (d)(2) of this section, any sedimentation pond, or related pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations unless—

(i) The permittee submits to the regulatory authority and to the Director by May 3, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 3, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 3, 1978;

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(iii) The construction work is to be performed in accordance with plans designed by a professional engineer;

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than June 3, 1978 and completed later than November 4, 1978; and

(v) The Director approves of any schedules which contain an estimated date of completion beyond October 3, 1978.

(4) The Director shall be deemed to have approved such schedules referred to in paragraph (d)(3)(v) of this section, unless written disapproval is received by the operator on or before June 3, 1978.

(e) *Satisfying Permanent Program Performance Standards in lieu of Initial Program Performance Standards.* Where there is a counterpart Permanent Program performance standard in subchapter K of this chapter that corresponds to an Initial Program performance standard in subchapter B of this chapter, meeting either performance standard will satisfy the requirements of subchapter B of this chapter.

[42 FR 62677, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 43 FR 5001, Feb. 7, 1978; 43 FR 8091, Feb. 27, 1978; 49 FR 38477, Sept. 28, 1984; 56 FR 6227, Feb. 14, 1991; 59 FR 43419, Aug. 23, 1994]

### § 710.12 Special exemption for small operators.

(a) As used in this section—

(1) *Permittee* means a person holding a permit under State law and to whom the permit was originally issued.

(2) *Renewed permit* means any extension of the original area of duration of a permit.

(b) If a person is an eligible permittee under paragraph (c) of this section and intends to conduct surface coal mining operations on or after May 3, 1978, that permittee may receive from the Director a limited exemption from the performance standards of this chapter. The exemption shall not—

(1) Include the Special Performance Standard of § 716.2(a)(1) of this chapter regarding the handling of spoil;

(2) Apply to surface coal mining operations to be conducted under a permit or renewed permit issued on or after August 3, 1977;

(3) Include any general or special performance standard with which a permittee is required to comply by a State;

(4) Relieve the permittee of the general obligations imposed by § 710.11(a) of this part regarding conditions or practices creating imminent danger or causing significant, imminent environmental harm; or

(5) Relieve the permittee of any obligations under State law, regulation or permit.

(c) A permittee is eligible for an exemption under this section—

(1) If the actual and attributed production of that permittee is estimated by the Director not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee—

(i) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or

(ii) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by 12 yields a product of 100,000 tons or less.

(iii) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

(d) Application for an exemption under this section shall be submitted to the Director of the Office by March 1, 1978 with a copy to the State regulatory authority.

(e) The request for exemption shall be in the form of an affidavit under oath and shall include—

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mining Enforcement and Safety Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each